

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5202 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HARISIDDH SEVA SANGH

Versus

DIRECTOR

Appearance:

MR ANANT S DAVE for Petitioner

Ms Siddhi Talati, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 05/04/2000

ORAL JUDGEMENT

Rule. Ms Siddhi Talati, AGP appears for the respondents and waives service of notice of rule. In the facts and circumstances, the the matter is taken up for final hearing today.

This petition is filed against an order dated 25th January, 1999 passed by the Deputy Secretary, Department of Social Justice, Government of Gujarat, Annexure 'A' by which Ashram Shala run by the petitioner was ordered to be closed and recognition which was granted was ordered to be cancelled.

The case of the petitioner was that in accordance with recognition granted by the authorities, the petitioner was running an Ashram Shala. On 30th August, 1998, a surprise inspection was made by officers of the respondents and it was found that Ashram Shala was closed. Neither principal, teaching staff, non-teaching staff nor students were found and hence, a notice was issued on 14th September, 1998, Annexure 'D' to the petition inter alia alleging that there were illegalities and irregularities in administration and functioning of the Ashram Shala. Three irregularities and defects were alleged against the petitioner - (i) at the time of visit on 30th August, 1998, Ashram Shala was found closed; (ii) at the time of visit, principal, teachers, employees and students were not present; and (iii) no record was produced. On 13th September, 1998, a reply was submitted by the petitioner wherein it was stated that on August 30, 1998, at the time of visit of officers of the respondents, Ashram Shala was closed because the husband and wife who were working as Principal and Vice-Principal of the Ashram Shala had gone to their native place because of death of the elder brother of the Principal. In view of absence of principal and Vice-Principal, students were not there. Since nobody was present at the Ashram Shala, record could not be produced.

After considering the reply submitted by the petitioner trust, the authorities passed an order inter alia observing that the explanation put forward by the petitioner was not convincing and could not be accepted. It was also stated that though recognition was granted in May 1998, till the date of hearing of the matter, no land was purchased. Taking into account all those circumstances, recognition was liable to be cancelled and it was accordingly cancelled. The said order is challenged in the present petition.

Notice was issued on 6th September, 1999 by making it returnable on 17th September, 1999. This Court also passed an order observing that advocate for the petitioner trust would produce death certificate of elder brother of Principal of the petitioner institution. Accordingly, a certificate of Sarpanch of Naroda Group

Gram Panchayat dated 10th October, 1998 is produced which is kept on record.

Mr. Dave for the petitioner contended that due to death of elder brother of the Principal, the principal and his wife had suddenly to rush to their native place and hence, Ashram Shala was closed. He further submitted that since Principal and Vice Principal were not absent, students were not present. He stated that Ashram Shala is a small school which has only 30 students. He also submitted that an additional ground was taken into account that no construction was made for which no notice was issued. He, therefore, submitted that the petition deserves to be allowed.

A counter affidavit is filed by the Deputy Director Mr. Parmar supporting the action of the respondent. It was inter alia stated that on August 30, 1998, Ashram Shala was closed. A notice was, therefore, issued to the petitioner. Personal hearing was also afforded and order was passed. It was further stated that even in past, Ashram Shala was found closed. It has also not purchased land and thus violated the terms and conditions. Purchase of land was a condition precedent. It was stated that though there was no specific charge in the present proceedings regarding failure to purchase the land, the petitioner was very much aware of it and Banakhat was also produced. Hence, no prejudice was caused to the petitioner and the petition is liable to be dismissed.

In the facts and circumstances of the case, in my opinion, the petition deserves to be allowed only on one ground that the respondent authorities had not considered in its proper perspective the fact regarding death of the brother of the principal for which principal and his wife had to go to native place. Regarding failure to purchase the land, in the show cause notice, no such ground was mentioned. In my opinion, therefore, the order deserves to be quashed and set aside. Rule is accordingly made absolute. The order passed by the respondents at Annexure 'A' is quashed and set aside. It is, however, open to the authorities to issue fresh show cause notice and decide the question once again after affording an opportunity of being heard to the petitioner and disposal of this petition and setting aside of the order will not come in the way of the authorities in taking action against the Ashram Shala in accordance with law. Petitioner is also permitted to produce whatever record it wants to produce. There shall be no order as to costs. Direct service is permitted.

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